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THE DESECRATION OF THE FERGUSON MONUMENT TRUST: THE NEED FOR WATCHDOG LEGISLATION

LUIS KUTNER

INTRODUCTION

THE law of charitable trusts in this country is in dire need of critical review. Many millions of dollars have been donated to charitable trusts by public-minded citizens, only to have been covertly used by the trustees or administrators for their own purposes. Moreover, the present laws, both of Illinois and most other states, regarding charitable trusts, offer little or no protection for the intended beneficiaries. The purpose of this article is to carefully examine one case of clear abuse of a charitable trust, and to use that example as a vehicle to demonstrate the inadequacy of the 1961 Illinois Charitable Trust Act.

I. THE FERGUSON CASE

Upon his death in 1905, Mr. Benjamin F. Ferguson left substantially all of his one million dollar estate in trust to be permanently used for beautifying the City of Chicago through the erection of statuary and artistic monuments. Naming the Northern Trust Company as trustee, the will stated:

My said Trustee after paying the bequests hereinabove mentioned and establishing or realizing and keeping intact a permanent trust fund of not less than \$1,000,000 shall annually thereafter or oftener, if required, pay the entire net income arising therefrom (after deducting its compensation as Trustee herein mentioned) to the Art Institute of Chicago, to be known as the B. F. Ferguson Monument Fund and *entirely and exclusively used and expended by it under the direction of its Board of Trustees in the erection and maintenance of enduring statuary and monuments*, in the whole or in part of stone, granite, or bronze, in the parks, along the boulevards, or in other public places within the City of Chicago, Illinois, commemorating worthy men or women of America, or important events in American history. The plans or designs for such statuary

Member, Illinois Bar; President, Commission for International Due Process of Law; Author of Proposals of WORLD HABEAS CORPUS, HABEAS PROPRIETATEM; author of WORLD HABEAS CORPUS (Oceana, 1962); former Visiting Lecturer and Associate Professor, Yale Law School; Consul General of Guatemala. Assistance of Russell M. Pelton, Jr., University of Chicago Law School, is acknowledged.

or monuments and the location of the same shall be determined by the Board of Trustees of such Institute.¹

By this unprecedented gift to the people of Chicago, Benjamin Ferguson's will apparently assured Chicago's place among the world's most beautiful cities. A Director of the Art Institute, William French, was moved to declare, "The importance of this generous bequest to Chicago as a city cannot be overestimated. It is a long step toward making Chicago the city beautiful."² The *Chicago Tribune* headlined, "Will of B. F. Ferguson Assures City Place Among World's Cities Beautiful," and then stated,

No other city in the world has such a fund available as that left by Mr. Ferguson, and officials of the Art Institute, artists, and devotees of municipal art freely predicted that the bequest would in another generation make Chicago the richest city in the world in sculpture and the Mecca of artists.³

Two long-time friends of Ben Ferguson's played vital roles in Chicago's obtaining this great bequest. One was Daniel Burnham, the renowned city-planner, who convinced his friend Ferguson of the great value of such a gift, and who later pointed out the role of the Ferguson Fund in Burnham's long range plan for Chicago thusly:

Quite in accord with the Plan of Chicago is the Benjamin Franklin Ferguson Monument Fund of one million dollars the income of which is available for defraying the cost of statuary commemorating worthy men and women of America or important events in American history to be erected in the parks and boulevards of the city under the direction of the trustees of the Art Institute.⁴

The other was Charles Hutchinson, President of the Art Institute Board, who assured Ferguson that by entrusting administration of his Fund to the Art Institute Board he was insuring that the very best sculpture would always be selected.

The will of B. F. Ferguson, through its creation of the Ferguson Monument Fund, intended by clear language and intent and direction that the people of the City of Chicago were specifically designated as the true and only beneficiaries of the Fund that was designated to be used for the creation of "enduring statuary monuments" within the City of Chicago. Regarding the role of the Art Institute, a private in-

¹ Section s(e) of will (emphasis added). See also, *Albright v. United States*, 308 F. 2d 739, 743. (5th Cir. 1962). "The intent and purpose of the settlor is the law of trust."

² Richey, *Accused: The Art Institute*, FOCUS/MIDWEST, Sept., 1962, pp. 8-9.

³ *Chicago Daily Tribune*, April 15, 1905, p. 2, col. 3.

⁴ BURNHAM & BENNETT, *THE PLAN OF CHICAGO* 121 (1909).

stitution, it is to be noted that the income was not to be given *to* the Institute, but only to be *administered* by the Art Institute in the erection of statuary in the City of Chicago.

In the years that followed Ben Ferguson's death, the Art Institute Board, under the direction of Charles Hutchinson, did indeed channel the trust income into the erection of several outstanding statues and artistic monuments in Chicago.⁵ However, in 1924, with the death of Charles Hutchinson, the erection of new statuary by the Art Institute Board declined sharply. The mounting of a pair of equestrian Indians in 1929 marked the Ferguson Fund's last contribution to the people of Chicago.

What followed is perhaps the classic example of how the beneficiaries of a charitable trust can be robbed of their intended benefits through collusion among the parties expected to protect the beneficiaries' interests. In the early 1930's the Art Institute began planning a major expansion program. However, the depression greatly hampered the Institute's fund raising from private individuals (its usual source of revenue), and the Directors of the Art Institute began searching about for new sources of cash. It was decided to attempt to seize the income from the Ferguson Monument Fund; and, when the trustee, the Northern Trust Company, offered no resistance, a financial *coup d'état* was carefully planned and put into effect. On May 22, 1933, at 10:02 A.M. the Art Institute filed a Complaint in the Circuit Court of Cook County,⁶ requesting the court to construe the language of sub-paragraph 5(e) of the B. F. Ferguson will so that the word "monument" might include a building; specifically, an addition to the Art Institute. This suit was filed quietly and without previous publicity. At 10:04 A.M. on the same day the Attorney General's Answer was filed, making only a nominal defense and conceding all the points raised by the Art Institute. Minutes later, at 10:17, a seventeen-page

⁵ By 1929 the Ferguson Fund had financed, in whole or in part, the following monuments: (1) The Fountain of the Great Lakes in Grant Park, adjacent to the south terrace of the Art Institute; (2) Statue of the Republic in Jackson Park; (3) Alexander Hamilton Monument in Grant Park; (4) Illinois Centennial Monument in Logan Square; (5) Eugene Field Monument in Lincoln Park; (6) Fountain of Time on the Midway, Jackson Park; (7) Theodore Thomas Memorial in Grant Park; (8) Washington Monument on the steps of the Art Institute; (9) Marquette Monument in Douglas Park; (10) One of the sculptured bridge houses at Michigan Avenue and the Chicago River; and (11) The two mounted American Indians at Congress Street and Michigan Avenue. No public monuments of any significance have been financed by the Ferguson Fund since 1929.

⁶ Art Institute v. Kerner, Case No. B 269011 (1933).

decree was entered declaring that the word "monument" in the Benjamin Ferguson will could indeed include a building, and that the Art Institute could use the accumulated and future income of the Ferguson Fund for the construction and maintenance of an addition to the Institute. If these facts were not indicia enough of collusion, it was subsequently discovered that the Art Institute's Complaint, the Attorney General's Answer, and the court's Decree were all typed on the same typewriter, all bore the same watermark, and the Attorney General's Answer was enclosed in the reversed blue backing of the Art Institute's counsel. *It is thus manifest that all three documents were prepared by the Art Institute's counsel, Percy B. Eckhart, who was himself a member of the Art Institute's Board.* Moreover, although the Decree referred to "the proof, oral, documentary and written, taken and filed in said cause," in fact no witnesses were heard *and no transcript of any proceedings appears in the court files*; reinforcing the suspicion of fraud.

Thus, in less than an hour the income of a great public charitable trust for the City of Chicago was quietly channeled into the coffers of a private corporation. Where the Art Institute had originally been merely the *administrator* of the more than million dollar Ferguson Fund, it had suddenly become the *sole beneficiary*. Because the Art Institute decided to postpone construction of the museum addition until a sizable fund had accumulated, the public became aware of its loss only gradually. Several civic groups' requests for assistance in erecting new sculptures were turned down in the 1930's and 1940's,⁷ slowly focusing attention on the fact that the Art Institute exclusively was enjoying the benefit of the Ferguson Fund.

⁷ DRURY, *OLD CHICAGO HOMES* 192 (1941): "While a member of the West End Woman's Club, Mrs. Brumback served on the committee seeking to obtain a statue for the West Side out of the income of the million-dollar B. F. Ferguson Monument Fund. The committee's request was turned down by the trustees of the Art Institute, administrators of the fund, on the ground that the money was needed to build an East Wing on the Art Institute."

Another unsuccessful request is indicated in the minutes of a meeting of the Art Institute's Ferguson Fund Committee on May 21, 1946, which state in part: "The Museum of Science and Industry, through Mr. Van Deventer of their staff, has made a request for assistance in erecting two statues on the North side of the building. During the discussion, the following points were brought out: As the Ferguson Fund has not been used to build any monuments or statues for many years, public criticism might result if attention is not paid to the project suggested by the Museum of Science and Industry. . . . The Chairman wished to emphasize that the final choice rests entirely with the committee." Needless to say, the Museum of Science and Industry's request was turned down on the ground that the Art Institute was saving the sculpture fund for its building project.

By 1955, \$1,600,000 income had accumulated in the B. F. Ferguson Monument Fund from the Ferguson Estate, and the Art Institute decided to proceed with the curiously long-deferred construction of its addition. Since the 1933 decree had sanctioned a museum building, and it had been decided to construct an office wing in a slightly different location instead, it was deemed prudent to again obtain court affirmance of the same things that had been obtained in 1933 under collusive circumstances. The general public was by now aware of the Art Institute's scheme, and several parties, including the City of Chicago itself, requested the new Attorney General, Latham Castle (now a justice in the Circuit Court of Appeals), to enter a vigorous defense to the Art Institute's petition. However, the Attorney General, whose relative, Mrs. Byron Harvey, was on the woman's board of the Art Institute, publicly declined to resist the Art Institute's petition, stating that he felt himself bound by the earlier judgment.⁸ After several groups' petitions to intervene were denied, the Circuit Court of Cook County decreed that, as requested by the Art Institute, the income from the Ferguson Fund could be perpetually used for the construction and maintenance of the Art Institute's administrative wing.⁹

Subsequent suits¹⁰ to vacate the two earlier decrees foundered on the same point that had precluded the intervention of interested parties in the *Art Institute v. Castle* case; i.e., it had previously been held by the Illinois Courts that the Attorney General, as the "protector of public charitable trusts," was the sole representative eligible to bring suits concerning them.¹¹

Thus, the perversion of the Ferguson Monument Fund was complete. Not only had the administrators channeled the funds from a

⁸ Chicago Daily Tribune, May 21, 1955, p. 2: "Attorney General Latham Castle yesterday rejected a request that he prepare a vigorous rather than a nominal defense to a Circuit Court suit in which the Art Institute seeks authority to use accumulated income from a trust fund to build a \$1,200,000 addition to its building."

"Castle said his opposition would be only nominal, in his capacity as representative of the people, because the court in 1933 approved use of the funds for an extension to the building, and the present suit was necessary only because the Institute has revised its building plans."

⁹ *Art Institute v. Castle*, Case No. 55 C 249 (1955).

¹⁰ The most recent such suit being *Greene v. Art Institute*, 16 Ill. App. 2d 84, 147 N.E. 2d 415 (1958).

¹¹ *People ex rel. Courtney v. Wilson*, 327 Ill. App. 231, 63 N.E. 2d 794 (1945). Interestingly, this was another case in which the Art Institute of Chicago was alleged to have abused a charitable trust in its care; the sum involved this time was \$300,000.

public to a private use, but the premeditated fraud had indeed been given judicial sanction.¹²

II. ILLINOIS LAW ENCOURAGED THE ABUSE OF THE FERGUSON FUND

The Ferguson case is worthy of careful analysis for several reasons. First of all, a study of the Art Institute's tactics in commandeering the Ferguson Monument Fund reveals several major flaws in the charitable trust legislation of most states. Secondly, the case demonstrates how even the most precise, explicit standards in a charitable trust document can be circumvented by a trustee or administrator determined to alter the use of the trust.

Illinois law has long recognized that a court of general equity jurisdiction has the power to authorize deviation from the terms of a trust.¹³ However, it is equally well recognized that the court must make two specific findings before it may authorize such a deviation:

- (1) Changed circumstances not anticipated by the creator of the trust;
and
- (2) Some exigency resulting from such changed circumstances which makes deviation from the terms of the trust indispensable to the preservation of the trust estate or to the accomplishment of the purposes of the trust in the case of some other necessity of the most urgent character.¹⁴

It is therefore obvious, as it must have been to the Directors of the Art Institute in 1933, that should the Art Institute petition for permission to *deviate* from the original terms of the Ferguson Trust, the two above-mentioned criteria would have to be met. Knowing that it would be extremely difficult to even nominally maintain that the trust estate was currently in danger or that the beneficiaries would suffer great hardship without a deviation, the Art Institute was hesitant to initiate such an action.

The Art Institute got around this stumbling-block in the Illinois law quite easily, however. Rather than petition for permission to *deviate* from the terms of the trust, the Art Institute simply petitioned

¹² Notwithstanding the refusal of the Illinois courts to recognize the patent fraud committed in the Ferguson case, civic groups, notably the Chicago Heritage Committee, are still campaigning to restore the B. F. Ferguson Monument Fund to its intended use in beautifying the City of Chicago.

¹³ The leading Illinois case is *Curtiss v. Brown*, 29 Ill. 201 (1862). See also ILL. REV. STAT. ch. 148, § 32.1(b) (1961).

¹⁴ From a summary of the Illinois trust law in Thigpen, *Basis for Deviation of Pre-1941 Trusts*, 50 ILL. BAR J. 1102 (1962).

to have the terms of the trust document *reconstrued*. Illinois courts of equity have great leeway in the construction they may place on the terms of trust documents, even if the effect of the construction is in fact to authorize considerable deviation from the original terms of the trust document.

When the Art Institute petitioned the Circuit Court of Cook County whether the words "enduring monuments" in the B. F. Ferguson will could be construed to include an addition to the Art Institute itself, the necessary implication was that the questioned phrase was ambiguous and difficult to understand. Whether that was in fact the case is important because it is directly relevant to the charge that the Board of the Art Institute acted with fraudulent intent and without good faith in altering the use of the Ferguson Funds.

First of all, it is of great significance that prior to 1933, the Art Institute had never maintained or even suggested that the terms of the trust were the least bit difficult to understand. Indeed, the ease and regularity with which the Institute had administered the funds for twenty-eight years is strong evidence that the terms of the trust were quite clear.

No will or document can be interpreted equitably unless the interpreter understands the language as used at the time of the writing. When on the 25th of November, 1904, Benjamin F. Ferguson drew up his Last Will and Testament, he designated specifically that the Fund be used for the creation of "enduring statuary and monuments." In this regard it is highly significant that during Benjamin Ferguson's lifetime *there was not a single building listed in the official records of Chicago as an "enduring monument" to be protected from destruction in the process of city development, although there were numerous libraries, exhibition halls, and museums (including the Art Institute) in existence at that time.* This fact is important because it indicates at the least what Benjamin Ferguson intended that his money *not* be used for.

There appears to have been no confusion on the part of Ben Ferguson's contemporaries as to the meaning of "enduring monuments" as used in the trust document. On September 9, 1913, Charles L. Hutchinson, then President of the Art Institute, as well as of the B. F. Ferguson Fund, made an address at the dedication of the "Fountain of the Great Lakes," the first statue financed by the Ferguson Fund, in Grant Park on the south side of the Art Institute in which he stated:

During his life among us, Mr. Ferguson was a modest, unassuming citizen, devoting most of his time to his business but, as with many other businessmen, his thoughts were not all given to commercial life. He was a dreamer of dreams.

He had visions of a City Beautiful and a strong desire to aid in the upbuilding of such a city. He saw that it was within his power to be of material service in the building of such a city here at home, and he resolved to act and to act generously. It was to create a fund of at least one million dollars, the proceeds of which should forever be devoted to the realization of his dream.

Future generations . . . will wonder at the farsighted wisdom of this man, who loved his fellow men and sought to be of service to them—sought not only to minister to esthetic sense, but to arouse their patriotism as well.¹⁵

The clarity of Ben Ferguson's bequest has been further pointed out as follows:

Now, this professed lack of comprehension of the will's terminology is puzzling in as much as the Art Institute at the time of the bequest commended Mr. Ferguson for making his intent so clear. Newton H. Carter, then Art Institute secretary, told the *Chicago Tribune* that prior to his death Mr. Ferguson had 'called on the officers of the Institute with his attorney' and explained his bequest to them. 'Mr. Ferguson said he had traveled in Europe constantly and was struck by the impressiveness of art works in the parks and along the boulevards. He said he regretted that Chicago should be so far behind other municipalities and wished the money expended with a view to filling the void.' Art Institute Director William French was quoted in the *Tribune* as saying: 'The provisions of the will are so direct and clear that only works in marble, granite, or bronze of the highest type may be purchased.'¹⁶

All these facts were available to both the Art Institute and the Circuit Court of Cook County in 1933, when the Board of the Art Institute complained that it was unable to fully comprehend the meaning of the term "enduring monuments." These facts lead irresistibly to the conclusion that Ben Ferguson intended his money to be used for the creation of statues and works of art throughout the City of Chicago, not the construction of a single, privately-owned building.

But if the facts do lead so "irresistibly" to the conclusion suggested above, then how in good faith could the Circuit Court of Cook County have decreed that the phrase "*enduring monuments*" as used by Ben Ferguson included an addition to a private museum? The answer might lie in part in the words "good faith," for it has already been demonstrated that there was evident collusion between the attorney for the Art Institute, the Attorney General, and the Circuit Court itself in regard to the 1933 case. But to a far greater degree, the actions of the Circuit Court of Cook County throughout the Ferguson

¹⁵ Men and Events, Dec., 1948, p. 6.

¹⁶ *Supra* note 2 at p. 11.

case can be best explained by the Illinois law itself, which prohibited any party from contesting the Art Institute's scheme to pirate the Ferguson Funds.

Although the Illinois Statutes were silent with regard to Charitable Trusts throughout the Ferguson cases, the governing rules had been laid down by the Illinois Courts over a long period of time. The Illinois Appellate Court, in *People ex rel. Courtney v. Wilson*,¹⁷ has stated the rule thusly:

The authorities are in accord that the right of the people of the State, speaking through their duly authorized officials, the state's attorney or the attorney general, is *exclusive*, and that having this right and duty, their representative has the right to control the case. *Hesing v. Attorney General*, 104 Ill. 292; *Stowell v. Prentiss*, 323 Ill. 309. This doctrine is so firmly imbedded in the law of this State that the Supreme Court has not only refused to permit anyone other than the authorized representatives of the people to appear in court to enforce a charitable or public trust, but has invariably gone behind the mere name or cloak of the people and dismissed a case where it has appeared that the real party in interest is some individual seeking to further a personal cause. *People ex rel. Moloney v. General Elec. Ry. Co.*, 172 Ill. 129; *Hunt v. Le Grand Roller Skating Rink Co.*, 143 Ill. 118.¹⁸

Under this rule it is impossible for *any* party, other than the Attorney General or the state's attorney, to attempt to enforce a charitable trust. Thus, *not even the beneficiaries of a charitable trust have a standing in court, but are wholly dependent upon the Attorney General's office in the enforcement of their trust.* When the Attorney General chooses not to enforce the trust, as happened in the Ferguson case, the beneficiary is left entirely without legal remedy. Not only is the beneficiary barred from *initiating* an action to enforce a charitable trust, but the Illinois Appellate Court held in *Art Institute of Chicago v. Castle*,¹⁹ a suit ancillary to the Ferguson case, that the beneficiary may not even *intervene* in an already pending suit involving the use of the trust funds.

That this rule is not only inequitable but verily invites fraud is manifest. Yet in spite of the dubious nature of this Illinois rule on the enforcement of Charitable Trusts, it was twice invoked to prevent citizens' groups from contesting the Art Institute's attempt to seize the Ferguson Funds.²⁰ In view of the Attorney General's continued re-

¹⁷ 327 Ill. App. 231, 163 N.E. 2d 794 (1945).

¹⁸ *Id.* at 243 (emphasis added).

¹⁹ 9 Ill. App. 2d 473, 133 N.E. 2d 748 (1956).

²⁰ The National Sculpture Society and the Chicago Chapter of Artists Equity filed separate petitions to intervene in the 1955 case. Both petitions were denied.

fusal to contest the Art Institute's complaint; denial of the petitions to intervene was tantamount to a default award of the Ferguson Monument Funds to the Art Institute. It was hardly necessary to go through the motions of the remainder of the suit, for the result had already been determined.

Indeed, the inequities wrought by the Illinois rule that only the Attorney General could enforce charitable trusts were noted by at least one of the judges who enforced that rule. Superior Court Judge Abraham Marovitz, after dismissing the taxpayer's suit brought by Wesley Greene to enforce the Ferguson Trust,²¹ told the Art Institute's counsel:

I have read the entire case of 1933 and all the papers and articles relating to the matter, as well as Mr. Ferguson's will made in 1904 and probated in 1905, and I cannot agree that Ferguson intended for the income from his money to be used to erect an administration building.²²

Shortly thereafter, Judge Marovitz met in his chambers with the author and the Corporation Counsel of the City of Chicago for the purpose of discussing the Illinois charitable trust law. The decision reached at that meeting was that Illinois law regarding charitable trusts needed a drastic overhaul. Judge Marovitz urged passage of a law which would permit a taxpayer to challenge the use of charitable trust funds.

On the basis of Judge Marovitz's recommendation and the adverse publicity created by the Ferguson case, the Illinois Legislature enacted a Charitable Trust Act effective July 31, 1961.²³ In its final form, however, the Illinois Charitable Trust Act was patterned after a uniform act which had already proven to be ill-conceived,²⁴ and thus failed to provide any of the safeguards which the Ferguson case revealed as being so necessary.

III. AN ANALYSIS OF THE ILLINOIS CHARITABLE TRUST ACT OF 1961

Legislation designed to enforce ordinary trusts is not effective for the purpose of enforcing charitable trusts. It is a basic premise of or-

²¹ *Greene v. Art Institute*, 16 Ill. App. 2d 84, 147 N.E. 2d 415 (1958).

²² Quoted in Richey, *Accused: The Art Institute*, FOCUS/MIDWEST, Sept. 1962, p. 8, 12.

²³ *Laws of Illinois Vol. II*, Charitable Trust Act 1961, § 6, p. 2094.

²⁴ Uniform Supervision of Trustees for Charitable Purposes Act, 9c UNIFORM LAWS ANNOT. 208-215 (1954). That the Uniform Act fails to adequately solve the problems inherent in charitable trust enforcement is evidenced by the fact that the Act has been fully enacted by only one state, California, since it was drafted in 1954.

dinary trust legislation that abuses of the trust will be quickly contested by the beneficiaries and other interested parties. Charitable trusts, however, lack this built-in protective device because of the simple fact that the beneficiaries are often defined in vague or indefinite terms. Indeed, it has been said that indefiniteness of beneficiaries is an essential feature of a charitable trust.²⁵ Thus, lacking the alertness of clear self-interest, most citizens, even those within the intended classes of beneficiaries, are impervious to abuses of charitable trusts.

The need for legislation specifically designed to protect and enforce charitable trusts has long been recognized by both commentators²⁶ and the Commission of Uniform State Laws which drafted the abortive Uniform Supervision of Charitable Trusts Act in 1954. The Ferguson case vividly spotlighted the need for enforcement legislation in Illinois.

With an eye to preventing abuses of charitable trusts such as occurred in the Ferguson case, as well as possible outright embezzlement, an analysis of the charitable trust laws of the several states indicates that there are four principal criteria which any truly effective charitable trust legislation must meet: (1) all charitable trusts must be registered with some designated state officer; (2) trustees must be required to submit regular reports of the financial activity of all charitable trusts; (3) the Act must have effective enforcement provisions, and (4) the beneficiaries of charitable trusts must have some recognized standing in court. Following is an analysis of the degree to which the Illinois Charitable Trust Act of 1961 meets each of these four criteria.

REGISTRATION OF CHARITABLE TRUSTS

The most elementary method of control and enforcement of charitable trust is to require that all such trusts be registered with the state. Although merely registering the existence of a charitable trust in no way guarantees that it will not be abused, registration is an essential first step of any enforcement procedure. The usual registration provision is that every trustee subject to the act must file with the appropriate state agency a copy of the instrument providing for his title, powers or duties. Not only does registration provide a floor upon

²⁵ *Kerner v. Thompson*, 365 Ill. 149, 6 N.E. 2d 131 (1937).

²⁶ See, e.g., Bogert, *Proposed Legislation Regarding State Supervision of Charities*, 52 MICH. L. REV. 633 (1954); D'Amours, *Control of Charitable Trusts*, 84 TRUSTS AND ESTATES 345 (1947).

which effective enforcement machinery can be built, but it also tends to make trustees conscious of their public responsibility.

The importance of registration to an effective charitable trust enforcement program has been explained thusly:

[P]rior to the enactment of the Charitable Trusts Act the Attorney General was severely handicapped in carrying out his duties relating to charitable trusts by his complete lack of knowledge of their existence. It is inconceivable that any efficient or sustained program could be developed to enforce charitable trusts and thereby protect the public for whom their benefits were intended without there being some plan for making information available to the person charged with the enforcement duty.²⁷

The registration provision of the Illinois Charitable Trust Act is as follows:

Section 6. Every trustee subject to this Act who has received property for charitable purposes shall file with the Attorney General, within 6 months after any part of the income or principal is received for application to the charitable purpose, a copy of the instrument providing for his title, powers or duties. If any part of the income or principal is authorized or required to be applied to a charitable purpose at the time this Act takes effect, the filing shall be made within 6 months thereafter.²⁸

Illinois is thus one of only ten states²⁹ which recognize the importance of registration in the enforcement of charitable trusts.

There are, however, two noteworthy exceptions to the general requirement of registration of charitable trusts under the new Illinois law. The first, granted in Section 4,³⁰ states that the Act does not ap-

²⁷ Klapp & Wertz, *Supervision of The Ohio Charitable Trusts Act*, 18 OHIO ST. L. J. 181 (1957).

²⁸ Illinois Charitable Trust Act, ILL. LAWS, 1961, § 6, p. 2095.

²⁹ The statutes of three states, New Hampshire, Ohio and Rhode Island, provide simply that all charitable trusts must be registered by the trustees with a designated state bureau (usually a Division of Charitable Trusts, under the Attorney General). All the other states which require registration of charitable trusts specify a time period within which the registration must be made. Iowa, Nevada and New Mexico, for example, require that the trustees register all charitable trusts within thirty days after receiving the trust property; while the trustees are given sixty days to register in both Michigan and South Carolina. Of all the states requiring registration within a specified period California and Illinois are most liberal, allowing the trustees six months after receiving the trust property in which to register.

³⁰ Section 4. This Act does not apply . . . to a corporation sole, or other religious corporation, trust or organization which holds property for religious, charitable, hospital or educational purposes, for the purpose of operating cemeteries or a home or homes for the aged; nor to any agency or organization, incorporated or unincorporated, affiliated with and directly supervised by such a religious corporation or organization; nor to an officer, director or trustee of any such religious corporation, trust or organization who holds property in his official capacity for like purposes; nor to a charitable organization, foundation, trust or corporation organized and operated for educational or hospital purposes or for the purpose of operating a cemetery or cemeteries, or a home or homes for the aged.

ply to any religious groups nor to a "charitable organization, foundation, trust or corporation organized and operated for educational or hospital purposes." Although exclusions of this breadth are fairly standard in charitable trust legislation, they are subject to criticism on the ground that they exclude some organizations and activities most requiring protective surveillance.

The second exception to the registration requirement is expressed in Section 2:

This Act applies to all trustees holding property for charitable purposes under any written trust the corpus of which has a value in excess of \$4,000, and over which the Attorney General has enforcement or supervisory powers.

Illinois is unique among the states in establishing a *minimum* size of trusts covered by the charitable trust act. As the Illinois Act was passed in 1961, the wisdom of the provision is yet to be adequately tested, but in view of the fact that the Illinois Division of Charitable Trusts has more than one and one-half billion dollars in charitable trusts under its supervision,³¹ this would seem to be an effective and logical way of minimizing the paper work of the agency.

Thus, the Illinois Charitable Trust Act on the whole satisfies the first criteria of effective charitable legislation by requiring the registration of most (though not all) such trusts.

REQUIRED REGULAR REPORTS

A second basic means of controlling and enforcing charitable trusts is to require that the trustees make regular reports of the financial activity of their respective trusts to a designated state authority. Such reports often enable regulatory agencies to pinpoint and correct abuses in the administration of charitable trusts before the abuses have in fact destroyed the trusts. Moreover, just as required registration tends to make trustees conscious of their public responsibility, the requirement of making regular reports tends to *keep* trustees conscious of that responsibility.

The Illinois Charitable Trust Act of 1961, like the legislation in many other states,³² generally requires trustees of charitable trusts to

³¹ Interview with Asst. Ill. Atty. Gen. Martin Handleman, Director of Charitable Trusts, Oct. 10, 1962 (Chicago).

³² At the present time nineteen other states have statutory provisions which require the regular auditing of the financial records of charitable trusts. In sixteen of these states (California, Connecticut, Florida, Indiana, Iowa, Massachusetts, Nevada, New Hampshire, New Mexico, North Carolina, Oregon, Rhode Island, South Carolina, Vermont, Virginia, and Wisconsin) the trustees are required to file annual reports

file regular reports. The requirement is established in section 7 (a) of the Act as follows:

Section 7. (a) Except as otherwise provided, every trustee subject to this Act shall, in addition to filing copies of the instruments previously required, file with the Attorney General periodic written reports under oath, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the trustee, in accordance with rules and regulation of the Attorney General.

The "periodic" report required in section 7 (a) has been more specifically defined as "annual" by the Attorney General's Rules and Regulations for the Administration of Charitable Trusts in Illinois.³³

Illinois has a unique exception to its requirement that the trustees of charitable trusts file annual reports. That exception is that no report is required of a trust which is the subject of a pending adversary proceeding.³⁴ The justification for this exception is that the trust entity has not yet been determined.

There is another very significant exception to the requirement set forth in Section 7 (a). Illinois, like both California³⁵ and South Carolina,³⁶ grants all banks and trust companies acting as trustees of charitable trusts an exemption from the requirement of filing annual reports.³⁷ Because banks and trust companies are the trustees in the vast

with some state agency. The appropriate agency is uniformly designated by the states either as one subordinate to the Attorney General, or as the clerk of the court having jurisdiction over the trust. The trustees are required to file biennial reports in Ohio and "periodic" reports in Michigan. The final state in this category is Wyoming. Although Wyoming does not require the trustees themselves to file reports, it does provide that the State Examiner must annually examine the books of all charitable trusts. WYO. GEN. STAT. tit. 9, § 104 (1957). The Wyoming State Examiner informs us that he obtains his information for a current list of charitable trusts from the Clerk of Court records.

³³ RULES & REGULATIONS FOR THE ADMINISTRATION OF CHARITABLE TRUSTS IN ILLINOIS § 5 (effective Jan. 30, 1962).

³⁴ Illinois Charitable Trust Act, ILL. LAWS, 1961, § 7-e, p. 2097.

³⁵ CALIF. CODE ANN., Government, §§ 12580-96 (1955).

³⁶ S. C. CODE, §§ 67-81 to 85 (1962).

³⁷ LAWS OF ILLINOIS (1961), Charitable Trust Act, § 6: "Every trustee subject to this Act who has received property for charitable purposes shall file with the Attorney General, within 6 months after any part of the income or principal is received for application to the charitable purpose, a copy of the instrument providing for his title, powers or duties. . . . Upon complying with the requirement of this Section, Banks and Trust Companies, authorized to accept and execute trusts in this State, and an individual or individuals duly appointed, qualified and acting as co-fiduciary or co-fiduciaries with any such Bank or Trust Company, shall be exempt from all other provisions and requirements of this Act."

majority of charitable trusts, exempting them from the regulatory legislation thoroughly emasculates the Charitable Trust Act. The rationale for this exemption is presumably that banking institutions are already under so much supervision that any abuse in the administration of a charitable trust would be easily detectable, without the inconvenience of requiring banks and trust companies to file additional reports. This argument, however, has recently been subjected to heavy criticism. One noted commentator has stated:

That the examinations by the Superintendent and Comptroller were found 'limited in scope and inadequate for their purposes . . .' was indicated in a letter from the California attorney general's office stating that they 'contemplate introducing legislation in the next session of the legislature to require banks to file annual reports with the attorney general on their administration of these trusts.'³⁸

Moreover, it is to be noted that in the case of the Ferguson Monument Trust the gross abuse of that charitable trust was carried on with the tacit approval of the trustee, the Northern Trust Company. In the litigation associated with the Ferguson case, neither the state nor federal banking authorities took any part, much less attempted to enforce the trust. Thus, the Ferguson case amply demonstrates not only that banking institutions may occasionally become involved in the abuse of charitable trusts, but also that the ordinary state and federal supervision of banking institutions offers little or no protection against such abuses. To thus exempt banks and trust companies from the Illinois Charitable Trust Act not only creates the erroneous impression that charitable trusts are under tight state control but also renders the Act almost nugatory.

ENFORCEMENT PROVISIONS

Irrespective of what other provisions it may contain, a charitable trust act is only as effective as its enforcement provisions make it. Without adequate enforcement provisions, the most elaborate and far-reaching charitable trust statute is at best an empty gesture. In examining the enforcement provisions of a charitable trust act there are two questions to be considered; first, does the act provide for the enforcement of its own regulatory provisions; and secondly, does the act provide for the enforcement of the charitable trusts themselves.

Considering the former question first, although the Illinois Charita-

³⁸ D'Amours, *State Supervision of Charities: Present Status*, 4 N. H. BAR J. 76, 81 (1962).

ble Trust Act of 1961 requires the registration of all charitable trusts, there is no statutory provision specifically designed to enforce that "requirement." Neither the Act nor the Attorney General's Rules establish any penalty for a trustee who fails to register a charitable trust. Section 12 of the Act, which states that "[t]he Attorney General may institute appropriate proceedings to secure compliance with this Act," provides the only basis for enforcement of the registration requirement, but it presumably threatens uncooperative trustees with nothing more serious than removal for non-compliance.

Illinois is not alone, however, in its failure to enforce the registration requirement of its charitable trust act. Of the ten states which require registration, Ohio is the only one which has enacted an effective enforcement provision. The Ohio Code provides that for failing to register a charitable trust, a trustee is subject to a fine of not less than \$500 nor more than \$10,000, or a prison term of not less than one month nor more than one year, or both.³⁹ Considering the great sums of money often involved, the Ohio provision would appear to be none too strict.

Insofar as the requirement of filing annual reports is concerned, under the Illinois Charitable Trust Act not only are the vast majority of trustees (*i.e.*, banks and trust companies) exempted, but the Act has virtually no enforcement provisions for those trustees who are required to file annual reports. Again, section 12 of the Act can be construed as granting the Attorney General the power to remove uncooperative trustees for non-compliance, but this would hardly be a threat to a trustee seeking to conceal the misappropriation of a large sum of money. A truly effective enforcement provision is typified by the Wyoming statute which subjects trustees found giving false information to the state examiner to a fine of \$1,000 to \$5,000 and imprisonment of one to five years.⁴⁰

A greater test of the effectiveness of charitable trust legislation, however, is whether or not the act specifically provides for the enforcement of the charitable trusts themselves, or establishes penalties for trustees found abusing their position of trust. Indeed, enforcing the trust donor's intent should be the main objective of any charitable trust legislation and the principal criterion of the effectiveness of any such statute.

³⁹ BALDWIN'S OHIO REV. CODE ANNOT. tit. 1, § 109.99 (1953).

⁴⁰ WYO. GEN. STATS., § 9-108 (1957).

The only enforcement provision of this type in the Illinois Charitable Trust Act is that the Attorney General is specifically authorized to investigate the administration of charitable trusts if he so desires.⁴¹ While this type of provision hardly insures compliance with the trust donor's intent, it at least provides some basis for enforcement. As the Illinois Act has been only recently enacted, however, it remains to be seen whether the Attorney General will conduct an active program of investigation with the objective of enforcing the provisions of trust instruments.

Several states have provisions in their charitable trust acts specifically designed to enforce the trust donors' intent (besides merely authorizing investigations), and if the drafters of the Illinois Act had profited from their example the final draft of the Illinois Act might well have had more impact on the enforcement of trusts than it does. For example, trustees are required to post bonds before assuming their trust duties in Connecticut⁴² (unless a bond is expressly repudiated in the trust instrument) and in Florida⁴³ (upon petition of any interested party). In North Carolina the Attorney General may, upon suggestion of two reputable citizens, demand an accounting of the trustee;⁴⁴ five other states expressly grant the power to bring legal actions for the enforcement of charitable trusts to the Attorney General.⁴⁵

Thus, although the Illinois Charitable Trust Act of 1961 does have limited enforcement provisions, both for its own regulations and for the trusts themselves, this is an area in which the Act should be considerably strengthened.

BENEFICIARIES' STANDING IN COURT

In the law of trusts, a problem peculiar to charitable trusts is that of the standing of the trust beneficiaries in court. All jurisdictions recognize that the beneficiary of an ordinary trust has the right to initiate legal action (even if in the trustee's name) seeking the enforcement of that trust. This principle tends to break down, however, with

⁴¹ LAWS OF ILLINOIS, Charitable Trust Act, § 9 (1961).

⁴² CONN. GEN. STAT. ANOT., ch. 780, §§ 45-83 (1960).

⁴³ FLA. STATS., § 737.11 (1959).

⁴⁴ GEN. STATS. OF N. C., art. 4, § 36-20 (1950).

⁴⁵ Michigan (Public Acts of 1961, Act No. 101, app'd., May 26, 1961, § 11); Ohio (*supra* note 39, § 109, 24); South Carolina (S. C. CODE, § 67-83); Tennessee (TENN. STAT., § 23-2802); and Wisconsin (Wis. STAT., § 231.34 (1)). Michigan also authorizes the Attorney General to conduct an investigation of any charitable trust (*supra*, § 8).

charitable trusts because of the usually vague or indefinite identification of the beneficiaries in the trust document. The problem is that it is often difficult, if not impossible, to determine precisely who should legally represent the beneficiaries of a charitable trust.

At common law, the King as *parens patriae* could institute a suit in chancery by his Attorney General to enforce a charitable trust. In this country, since the common law validity of charitable trusts was recognized in *Vidal v. Executors of the Estate of Stephen Girard*,⁴⁶ it has been repeatedly held that the Attorney General is the sole party with standing to enforce a charitable trust in the absence of legislation to the contrary.⁴⁷ The exclusive nature of the Attorney General's enforcement power, long recognized by the Illinois courts,⁴⁸ was what prevented any other party from enforcing the B. F. Ferguson charitable trust.

However, in spite of the fact that a major cause for new charitable trust legislation in Illinois was Judge Marovitz's desire that beneficiaries of charitable trusts be granted standing in court, and in spite of the fact that several other states have enacted legislation which grants the beneficiaries of charitable trusts standing in court,⁴⁹ the final draft of

⁴⁶ 43 U.S. (2 Howard) 126 (1844).

⁴⁷ See, e.g., *Agan v. United States National Bank*, 227 Or. 619, 363 P. 2d 765 (1961); *In re Pruner's Estate*, 390 Pa. 529, 136 A. 2d 107 (1957); *Kennen v. State*, 174 Wash. 19, 24 P. 2d 403 (1933). Cf. RESTATEMENT (SECOND), TRUSTS, § 391.

⁴⁸ See, e.g., *Stowell v. Prentiss*, 323 Ill. 309, 154 N.E. 120 (1926); *People ex rel. Courtney v. Wilson*, 327 Ill. App. 231, 63 N.E. 2d 794 (1945).

⁴⁹ There are six states in which the beneficiaries of a charitable trust have some recognized standing in court.

Wisconsin is most explicit in this regard. Although sec. 231.34 (1) of the Wisconsin Statutes provides that the Attorney General may bring an action in the name of the state by any ten or more "interested" parties. Section 231.34 (3) then defines an "interested" party as a donor to the trust or a member or prospective member of the class for the benefit of which the trust was established.

Art. 16, sec. 195-196 of the 1957 Maryland Code and sec. 3502 of the West Virginia Code provide that suits to enforce or alter charitable trusts may be brought by the trustee, by the Attorney General, or by any "interested" party. An "interested" party is, however, not defined.

The Code of Virginia, sec. 55-26 to 55-34 (1950), is not only the most unusual but also the most ambiguous of the statutes in this category. It provides that a suit may be maintained against the trustee of a charitable trust in the name of the Commonwealth only when there is "no other party capable of maintaining such suit." This statement is not further clarified by either other provisions of the Code of Virginia or by the case law, but it could be construed to mean that any beneficiary could initiate an enforcement suit.

Finally, there are two states, Nevada and New Mexico, which have enacted the Uniform Trustees' Accounting Act, and expressly made it applicable to charitable trusts; in lieu of a Charitable Trust Act, per se. The Nevada statute provides that

the Illinois Charitable Trust Act of 1961 is completely silent on that subject. The failure of the Legislature to enable beneficiaries to enforce charitable trusts is inexplicable, and certainly must be considered one of the major omissions of the Charitable Trust Act.

CONCLUSION

Through the preceding analysis it has been the author's intention to spotlight the major weaknesses of the Illinois Charitable Trust Act of 1961. These flaws, which indeed render the Act practically impotent, can be summarized as follows: (1) banks and trust companies, trustees of the vast majority of charitable trusts, are exempted from filing annual reports; (2) the Act's enforcement provisions are minimal; and (3) beneficiaries have no standing in court to enforce charitable trusts.⁵⁰ Thus, the Illinois Charitable Trust Act is devoid of those safeguards which the Ferguson case revealed as being so necessary. This means that a fraud, such as was perpetrated upon the people of Chicago by the trustees of the Art Institute, is just as possible now as it was in 1933.

ADDENDUM

Since the completion of the above article there have been several new developments in the Ferguson case. Responding to the civic campaign led by the Chicago Heritage Committee and Artists Equity Association of Chicago, Illinois' energetic and capable new Attorney-General, William G. Clark, initiated a fresh inquiry into the administration of the Ferguson Monument Fund by the Art Institute.

Attorney-General Clark re-examined the facts of the Ferguson case and conducted a series of conferences with all interested parties. The Directors of the Art Institute of Chicago, through their attorneys, agreed that the accumulated income from the principal of the Ferguson Monument Fund of \$1,000,000 would be used to erect statuary in the City of Chicago in accordance with the express intention of the late Benjamin F. Ferguson.

This development not only restores the B. F. Ferguson Monument

beneficiaries' documents shall be delivered to the Attorney General; but sec. 165.190 states that any beneficiary may apply to the district court for an order requiring the trustee to perform his trust duties. The New Mexico statute, §§ 33-2-1 to 33-2-24, is practically identical.

⁵⁰ These objectionable features of the Charitable Trust Act are corrected in a Revised Illinois Charitable Trust Act which appears in the Appendix.

Fund to the use intended by its donor, *i.e.*, the beautification of the City of Chicago's streets, boulevards and parks, but also demonstrates that even the weak Illinois Charitable Trust Act of 1961 can be effective in the hands of conscientious and dedicated public servants. This does not, however, diminish the need for a stronger, revised Illinois Charitable Trust Act, an act which would not depend on the men enforcing it for its effectiveness. (December 1, 1962)

APPENDIX

PROPOSED REVISED ILLINOIS CHARITABLE TRUST ACT*

An Act providing for the reporting of and the enforcement of certain charitable trusts.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

SECTION 1. This Act may be cited as *the Revised Charitable Trust Act*.

SECTION 2. This Act applies to all trustees holding property for charitable purposes under any written trust the corpus of which has a value in excess of \$4,000, and over which the Attorney General has enforcement or supervisory powers.

SECTION 3. "Trustee" means (a) any individual, group of individuals, corporation, or other legal entity holding property in trust pursuant to any charitable trust, (b) any corporation which has accepted property to be used for a particular charitable corporate purpose as distinguished from the general purposes of the corporation, or (c) any corporation formed or operating for the administration of a charitable trust.

SECTION 4. This Act does not apply to the United States, any State, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or to any of their agencies or governmental subdivision; nor to a corporation sole, or other religious corporation, trust or organization which holds property for religious, charitable, hospital or educational purposes, for the purpose of operating cemeteries or a home or homes for the aged; nor to any agency or organization, incorporated or unincorporated, affiliated with and directly supervised by such a religious corporation or organization; nor to an officer, director or trustee of any such religious corporation, trust or organization who holds property in his official capacity for like purposes; nor to a charitable organization, foundation, trust or corporation organized and operated for educational or hospital purposes or for the purpose of operating a cemetery or cemeteries, or a home or homes for the aged.

SECTION 5. The Attorney General shall establish and maintain a register

* Additions to the Illinois Charitable Trust Act of 1961 are italicized. Portions of the 1961 Act eliminated are indicated by brackets.

or trustees subject to this Act and of the particular trust or other relationship under which they hold property for charitable purposes and, to that end, shall conduct whatever investigation is necessary, and shall obtain from public records, court officers, taxing authorities, trustees and other sources, copies of instruments, reports and records and whatever information is needed for the establishment and maintenance of the register.

SECTION 6. (a) Every trustee subject to this Act who has received property for charitable purposes shall file with the Attorney General, within 6 months after any part of the income or principal is received for application to the charitable purpose, a copy of the instrument providing for his title, powers or duties. If any part of the income or principal is authorized or required to be applied to a charitable purpose at the time this Act takes effect, the filing shall be made within 6 months thereafter. [Upon complying with the requirement of this Section, Banks and Trust Companies, authorized to accept and execute trusts in this State, and an individual or individuals duly appointed, qualified and acting as co-fiduciary or co-fiduciaries with any such Bank or Trust Company, shall be exempt from all other provisions and requirements of this Act.]

(b) *Any trustee subject to this Act who fails to file a copy of the trust instrument providing for his title, powers or duties as required in paragraph (a) of this section, shall be subject to a fine of not less than \$500 nor more than \$10,000, or a prison term of not more than one year, or both.*

SECTION 7. (a) Except as otherwise provided, every trustee subject to this Act shall, in addition to filing copies of the instruments previously required, file with the Attorney General periodic written reports under oath, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the trustee, in accordance with rules and regulations of the Attorney General.

(b) The Attorney General shall make rules and regulations as to the time for filing reports, the contents thereof, and the manner of executing and filing them. He may classify trusts and other relationships concerning property held for a charitable purpose as to purpose, nature of assets, duration of the trust or other relationship, amount of assets, amounts to be devoted to charitable purposes, nature of trustee, or otherwise, and may establish different rules for the different classes as to time and nature of the reports required to the ends (1) that he shall receive reasonably current, periodic reports as to all charitable trusts or other relationships of a similar nature, which will enable him to ascertain whether they are being properly administered, and (2) that periodic reports shall not unreasonably add to the expense of the administration of charitable trusts and similar relationships. The Attorney General may suspend the filing of reports as to a particular charitable trust or relationship for a reasonable, specifically designated time upon written application of the trustee filed with the Attorney General and after the Attorney General has filed in the

register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced thereby and that periodic reports are not required for proper supervision by his office.

(c) A copy of an account filed by the trustee in any court having jurisdiction of the trust or other relationship; if the account has been approved by the court in which it was filed, may be filed as a report required by this section.

(d) The first report for a trust or similar relationship hereafter established, unless the filing thereof is suspended as herein provided, shall be filed not later than one year after any part of the income or principal is authorized or required to be applied to a charitable purpose. If any part of the income or principal of a trust previously established is authorized or required to be applied to a charitable purpose, at the time this Act takes effect, the first report, unless the filing thereof is suspended, shall be filed within 6 months after the effective date of this Act.

(e) The periodic reporting provisions of this Act do not apply to any trustee of a trust which is the subject matter of an adversary proceeding pending in a court of competent jurisdiction in this State. However, upon commencement of the proceeding the trustee shall file a report with the Attorney General informing him of that fact together with the title and number of the cause and the name of the court. Upon entry of final decree in the cause the trustee shall in like manner report that fact to the Attorney General.

(f) *Any trustee subject to this Act who fails to file a periodic written report as required by this section, or who submits false information in such a report, shall be subject to a fine of not less than \$500 nor more than \$10,000, or a prison term of not more than one year, or both.*

SECTION 9. (a) The Attorney General may investigate transactions and relationships of trustees subject to this Act for the purpose of determining whether the property held for charitable purposes is properly administered. He may require any agent, trustee, fiduciary, beneficiary, institution, association, or corporation, or any person to appear, at a named time and place, in the county designated by the Attorney General, where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title and evidence of assets, liability, receipts, or disbursements in the possession or control of the person ordered to appear.

(b) *Any trustee subject to this Act who is found to have intentionally and materially violated his fiduciary responsibility to the intended beneficiaries of the trust, shall be subject to a fine of not less than \$1,000 nor more than \$10,000, or a prison term of not less than six months nor more than three years, or both.*

SECTION 10. When the Attorney General requires the attendance of any person, as provided in Section 9, he shall issue an order setting forth the

time when and the place where attendance is required and shall cause the same to be served upon the person in the manner provided for service of process in civil cases at least 14 days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena and, upon application of the Attorney General, obedience to the order may be enforced by any court having jurisdiction of charitable trusts in the county where the person receiving it resides or is found, in the same manner as though the notice were a subpoena. Such court may, in case of contumacy or refusal to obey the order issued by the Attorney General, issue an order requiring such person to appear before the Attorney General or to produce documentary evidence, if so ordered, or to give evidence touching the matter in question, and any failure to obey such order of the court may be punished by that court as a contempt upon itself. The investigation or hearing may be made by or before any Assistant Attorney General designated in writing by the Attorney General to conduct such investigation or hearing on his behalf. Witnesses ordered to appear shall be paid the same fees and mileage as are paid witnesses in the circuit courts of this State, and witnesses whose depositions are taken and the persons having the same shall severally be entitled to the same fees as are paid for like services in the circuit courts of this State. The Attorney General or the Assistant Attorney General acting in his behalf is empowered to administer the necessary oath or affirmation to such witnesses.

SECTION 11. Subject to reasonable rules and regulations adopted by the Attorney General, the register, copies of instruments and reports filed with the Attorney General shall be open to public inspection.

SECTION 12. (a) The Attorney General may institute appropriate proceedings to secure compliance with this Act and to secure the proper administration of any trust or other relationship to which this Act applies. Nothing in this Act confers on the Attorney General any additional powers to administer, supervise, or direct the administration of charitable trusts.

(b) *A suit to secure the proper administration of any trust or other relationship to which this Act applies may be brought in the name of the State by any ten or more interested parties.*

(c) *An "interested party," as used in paragraph (b) of this Section, shall include a donor to the trust or a member or prospective member of the class for the benefit of whom the trust was established.*

SECTION 13. This Act shall apply regardless of any contrary provisions of any instrument.

SECTION 14. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.